

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 6 5 01 PM '05

In the Matter of)

)
Telecommunications Relay Services
and Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities)

CG Docket No. 03-123

ORDER**Adopted: December 1, 2005****Released: December 2, 2005**

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. Pursuant to the Commission's directive in the *Two-line Captioned Telephone Order*,¹ the Interstate Telecommunications Relay Services (TRS) Fund administrator, the National Exchange Carrier Association (NECA), submitted a proposed interstate allocation factor for determining the number of inbound two-line captioned telephone call minutes compensable from the Interstate TRS Fund (Fund).² In this *Order*, we adopt NECA's proposed interstate allocation factor of 11 percent.

II. BACKGROUND

2. In the *Two-line Captioned Telephone Order*, the Commission concluded that two-line captioned telephone service is a form of TRS eligible for compensation from the Fund.³ The Commission also adopted NECA's proposed methodology for determining the number of inbound two-line captioned telephone call minutes compensable from the Fund.⁴ The Commission noted that for such calls there is currently no way for a provider to determine if a particular call is interstate or intrastate.⁵ As a result, the Commission instructed NECA to calculate an allocation factor for such calls that is based on the relationship between interstate and international traditional TRS calls and all intrastate, interstate, and

¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Order, 20 FCC Rcd 13195 (July 19, 2005) (*Two-line Captioned Telephone Order*).

² See Letter to Federal Communications Commission Secretary, Marlene Dortch from NECA Director, John Ricker, proposing the allocation factor for two-line captioned telephone calls (submitted August 2, 2005) (*NECA Letter*).

³ *Two-line Captioned Telephone Order*, 20 FCC Rcd at 13199, para. 10. See generally *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (August 1, 2003) (recognizing captioned telephone service as a form of TRS).

⁴ *Id.* at 13200, para. 12.

⁵ *Id.* at 13200, para. 11.

international traditional TRS calls.⁶

3. On August 2, 2005, NECA proposed an interstate allocation factor of 11 percent for inbound two-line captioned telephone minutes.⁷ The remaining 89 percent of such calls would be allocated to the intrastate jurisdiction.⁸ On August 24, 2005, the Commission released a Public Notice requesting comment on NECA's proposed allocation factor.⁹

4. Three comments were filed.¹⁰ Hamilton and Ultratec support NECA's proposed 11 percent allocation factor as consistent with the Commission's methodology for allocating 800 and 900 number call minutes.¹¹ NJP&A, however, recommends that the Commission set allocation rates on a statewide basis because in some states a significantly greater percentage of TRS calls are interstate.¹² NJP&A asserts that because New Jersey is located between the two large urban centers of New York and Philadelphia, New Jersey residents are more likely to make interstate calls, and therefore the proposed 11 percent factor would shortchange New Jersey and similar states.¹³

III. DISCUSSION

5. We adopt NECA's proposed allocation factor of 11 percent for determining the number of inbound two-line captioned telephone minutes compensable from the Interstate TRS Fund. The remaining 89 percent of such minutes shall be compensated by the intrastate jurisdictions. Upon reviewing NECA's filing, we conclude that it correctly calculated the factor as directed by the *Two-line Captioned Telephone Order*.¹⁴

6. NJP&A's assertion – that allocation rates be set on a statewide, rather than nationwide, basis – is not directed to NECA's proposed allocation factor, but rather to the allocation methodology itself. Therefore, this is not the appropriate proceeding in which to reconsider the allocation

⁶ *Id.* at 13200, para. 12.

⁷ *NECA Letter* at 2.

⁸ *Id.* As NECA explains, it calculated the factor based on the providers' projections of traditional TRS minutes for 2005 and 2006. Interstate and international minutes for both years totaled 24,459,907; local, intrastate, interstate and international minutes totaled 213,957,866. Dividing interstate and international minutes by total minutes results in a proposed interstate factor of 11 percent for interstate inbound two-line captioned telephone minutes.

⁹ *National Exchange Carrier Association (NECA) Submits Proposed Allocation Factor for Inbound Two-Line Captioned Telephone Calls for Compensation from the Interstate Telecommunications Relay Services (TRS) Fund for July 2005 through June 2006*, CG Docket No. 03-123, Public Notice, DA 05-2346 (August 24, 2005) (*NECA Proposed Factor PN*).

¹⁰ Comments were filed by Hamilton Relay, Inc. (Hamilton) (September 22, 2005); Ultratec, Inc. (Ultratec) (September 13, 2005), and New Jersey Protection and Advocacy, Inc. (NJP&A) (September 22, 2005).

¹¹ Hamilton Comments at 2-3; Ultratec Comments at 2; *see also Two-line Captioned Telephone Order*, 20 FCC Rcd at 13200, para. 12 (discussing allocation methodology used for 800 and 900 number call minutes). Ultratec also seeks clarification of the effective date of the allocation factor. Ultratec Comments at 2-3.

¹² NJP&A Comments at 2.

¹³ *Id.*

¹⁴ *Two-line Captioned Telephone Order*, 20 FCC Rcd at 13200, para. 12. As the Commission noted in the *Two-line Captioned Telephone Order*, the TRS Fund administrator shall propose an allocation factor on an annual basis, which will be reflected in the Fund administrator's annual filing proposing TRS compensation rates for the upcoming TRS Fund year. *Id.*

methodology, which the Commission adopted in the *Two-line Captioned Telephone Order*.¹⁵ Nonetheless, we note that the allocation factor adopted in this *Order* will benefit the states because presently the states are compensating providers of inbound two-line captioned telephone calls for *all* such calls.¹⁶ Further, we note that this methodology is the same methodology used for the jurisdictional allocation 800 and 900 number call minutes.¹⁷

7. The *Two-line Captioned Telephone Order* became effective October 14, 2005.¹⁸ Accordingly, the allocation factor adopted in this *Order* shall apply to the provision of inbound two-line captioned telephone calls for the period of October 14, 2005 through June 30, 2006.¹⁹ We therefore direct NECA to compensate providers of inbound two-line captioned telephone calls from the Interstate TRS Fund pursuant to the 11 percent interstate allocation factor retroactively to October 14, 2005.

IV. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA),²⁰ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²³ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

¹⁵ *Two-line Captioned Telephone Order*, 20 FCC Rcd at 13200, para. 12. A party dissatisfied with the allocation methodology could have challenged that order by filing a petition for reconsideration or a petition for review.

¹⁶ See The National Exchange Carrier Association, Inc., CC Docket No. 98-67, CG Docket No. 03-123, *Petition for Declaratory Ruling* at 2 (filed Dec. 10, 2004); *Two-line Captioned Telephone Order*, 20 FCC Rcd at 13195, para. 1 n.3.

¹⁷ *Two-line Captioned Telephone Order*, 20 FCC Rcd at 13198-13199, para. 9.

¹⁸ See *id.* at 13203, para. 23 (order is effective 30 days after publication in the Federal Register, which was September 14, 2005). See 70 FR 54294 (Sept. 14, 2005).

¹⁹ Under the Commission's rules, the TRS Fund year runs from July 1 to June 30. 47 C.F.R. § 64.604(c)(5)(iii)(H). A new allocation factor will be adopted each year at the same time the TRS compensation rates are adopted. We recognize that the *NECA Proposed Factor PN* sought comment on the proposed allocation factor for the annual period of July 1, 2005 through June 30, 2006. *NECA Proposed Factor PN* at 1. Because, however, the effective date of the *Two-line Captioned Telephone Order's* conclusion that two-line captioned telephone service is a form of TRS compensation from the Interstate TRS Fund was October 14, 2005, no two-line captioned telephone calls could be compensated from the Fund prior to that date. Therefore, the allocation factor for inbound two-line captioned telephone calls cannot be applicable prior to that date.

²⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²¹ 5 U.S.C. § 605(b).

²² 5 U.S.C. § 601(6).

²³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

established by the Small Business Administration (SBA).²⁴ Nationwide, there are approximately 1.6 million small organizations.²⁵

9. This *Order* adopts the interstate allocation factor for inbound two-line captioned telephone calls. As noted above, in August 2003 the Commission concluded that captioned telephone service is a form of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act.²⁶ In the July 2005 *Two-line Captioned Telephone Order*, the Commission concluded that two-line captioned telephone service is also a form of TRS eligible for compensation from the Fund. That order also recognized that there is no way to determine if a particular inbound two-line captioned telephone call is interstate or intrastate, and therefore adopted an allocation methodology and directed the Interstate TRS Fund administrator to propose an interstate allocation factor. This *Order* adopts the TRS Fund administrator's proposed allocation factor.

10. We do not believe that the adoption of the interstate allocation factor will have a significant economic impact; however, in the event that it does, we also note that there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.²⁷ Currently, only three providers are providing captioned telephone service and being compensated from the Interstate TRS Fund: CapTel, Inc., Hamilton and Sprint. We expect that only one of these providers may be a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service. The Commission will send a copy of this *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.²⁸ This certification will also be published in the Federal Register.²⁹

B. Paperwork Reduction Act Analysis

11. This document does not contain modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.³⁰

²⁴ 15 U.S.C. § 632.

²⁵ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

²⁶ See para. 2, *supra*; see also *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16121, para. 1.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.").

²⁸ 5 U.S.C. § 605(b).

²⁹ *Id.*

³⁰ See 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act

12. The Commission will not send a copy of this *Order* in a report to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because it concerns rules of particular applicability.

D. Materials in Accessible Formats

13. To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361, and 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, this *Order* is hereby ADOPTED.

15. IT IS FURTHER ORDERED that NECA shall compensate providers of inbound two-line captioned telephone service from the Interstate TRS Fund using the allocation factor adopted herein for the period October 14, 2005 through June 30, 2006.

16. IT IS FURTHER ORDERED that the Consumer & Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this *Order*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Consumer & Governmental Affairs Bureau